

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ORLANDO BETHEL, *et al.*, )  
 )  
 PLAINTIFFS, )  
 )  
 v. ) CASE NO. 2:06-cv-870-MEF  
 )  
 THE CITY OF SELMA, ALABAMA, et al., ) (WO-Not Intended for Publication)  
 )  
 DEFENDANTS. )

**ORDER**

On September 28, 2006, Orlando Bethel and Glynis Bethel filed this *pro se* lawsuit individually and on behalf of three minor children. The suit is brought pursuant to 42 U.S.C. § 1983 for alleged violations of Plaintiffs rights pursuant to the First, Fourth, and Fourteenth Amendments to the United States Constitution. The named Defendants to this action are the City of Selma, Alabama and several police officers of the City of Selma, Alabama.<sup>1</sup> Plaintiffs' Complaint seeks a temporary restraining order, a preliminary injunction, a permanent injunction, injunctive relief, declaratory judgment, and damages. Specifically, Plaintiffs challenge a City of Selma Ordinance as being unconstitutional and complain about their arrest at the hands of the police officers in Selma, Alabama. Upon review of the factual allegations presented in the Complaint, the Court concludes that this case should be transferred to the United States District Court for the Southern District of Alabama pursuant to 28 U.S.C. § 1404.<sup>2</sup>

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<sup>1</sup> These police officers are sued in their individual capacity and in their official capacity as police officers for the City of Selma, Alabama.

<sup>2</sup> Submitted along with the Plaintiffs' Complaint is a request for paperwork so that the Plaintiffs can seek leave to proceed *in forma pauperis*. This court makes no determination with

## DISCUSSION

A civil action filed under authority of 42 U.S.C. § 1983 "may be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b). However, the law further provides that "[f]or the convenience of parties and witnesses, [and] in the interest of justice, a district court may transfer any civil action to any other district . . . where it might have been brought." 28 U.S.C. § 1404(a).

All of the events or omissions alleged to have given rise to the claims occurred in Selma, Alabama. All individual defendants are alleged to be employed in Selma, Alabama. All records relating to the challenged arrest and to the challenged City of Selma Ordinance are located in Selma. Selma, Alabama is located within the jurisdiction of the United States District Court for the Southern District of Alabama. Thus, the majority of witnesses and evidence associated with this case are located in the Southern District of Alabama. In light of the foregoing, the Court concludes that in the interest of justice and for the convenience of the parties this case should be transferred to the United States District Court for the Southern District of Alabama for hearing and determination.

In light of the foregoing, it is hereby ORDERED that this case be TRANSFERRED to the United States District Court for the Southern District of Alabama pursuant to the

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respect to such request as the assessment and collection of any filing fee should be undertaken by the United States District Court for the Southern District of Alabama.

provisions of 28 U.S.C. § 1404.

DONE this the 29<sup>th</sup> day of September, 2006.

/s/ Mark E. Fuller  
CHIEF UNITED STATES DISTRICT JUDGE

A copy of this checklist is available at the website for the USCA, 11th Circuit at [www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)  
Effective on April 9, 2006, the new fee to file an appeal will increase from \$255.00 to \$455.00.

### CIVIL APPEALS JURISDICTION CHECKLIST

**1. Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:

- (a) **Appeals from final orders pursuant to 28 U.S.C. § 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. § 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. v. Mestre, 701 F.2d 1 365, 1 368 ( 11th Ci r. 1 983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. § 636(c).
- (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b). Williams v. Bishop, 732 F.2d 885, 885- 86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S.196, 201, 108 S.Ct. 1717, 1721-22, 100 L .Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
- (c) **Appeals pursuant to 28 U.S.C. § 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions . . .” and from “[i]nterlocutory decrees . . . determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
- (d) **Appeals pursuant to 28 U.S.C. § 1292(b) and Fed.R.App.P. 5:** The certification specified in 28 U.S.C. § 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
- (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S.Ct. 308, 312, 13 L.Ed.2d 199 (1964).

Rev.: 4/04

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P. 4(a) and (c) set the following time limits:
  - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD – no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
  - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
  - (c) **Fed.R.App.P. 4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
  - (d) **Fed.R.App.P. 4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
  - (e) **Fed.R.App.P. 4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).